THE HON'BLE MR JUSTICE A.GOPAL REDDY

-

W. P. No.8751/1995

-

M/s. Sri Lakshmi Rice Mill, SC No.785,Bibinagar

Nalgonda District represented by its partner

S.Bhaskar. ..Petitioner

V.

1. The A.P.State Electricity Board, represented by

Its Secretary, Vidyut Soudha, Somajiguda, Hyderabad

and another. ..Respondents.

THE HON'BLE MR JUSTICE A.GOPAL REDDY

-

W. P. No.8751/1995

ORAL ORDER:

The petitioner i s rice mill and is availing low tension supply of electricity from the respondent-Board for a contracted load of 74 HP under LT category. The said premises was inspected on 24-3-1994 by the D.P.E. Squad. Alleging that the petitioner indulged in pilferage of energy, a provisional assessment notice dt. 21-4-1994 was issued pointing out the following incriminating material:

1. The meter performance is checked with 15 A heating load and found the meter stuck up in all the three phases.

2. The meter was referred to MRT for testing.

After meter was got tested at MRT lab, it was found that seals fixed at the time of MRT testing of the meter are different from the seals available to the meter cover. Thereafter a show cause notice dt. 15-12-1994 was issued provisionally estimating the value of the energy pilfered by the petitioner at Rs.4,54,765/- and called upon the petitioner as to why action should not be taken for the said pilferage, to which the petitioner submitted his explanation. Along with the explanation, he also filed a petition seeking permission of the second respondent to examine the inspecting officer and his squad members, who inspected the premises of the petitioner on 21-4-1994 and other officials of the respondent-Board who are relevant for the purpose of adjudication. The request of the petitioner to cross-examine the officials of the respondent-Board was rejected. Aggrieved by the same, the petitioner moved this court by way of present writ petition and obtained say of all further proceedings.

In spite of 11 long years, the respondent-Board has not filed counter affidavit rebutting the

allegations made by the petitioner.

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the Board.

The Supreme Court in TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED AND OTHERS V. M/S. SHRI RAMA KRISHNA RICE MILL (2006(1) DT (SC) 228) held that it cannot be laid down as a rule of universal application that whenever the statement of departmental officer is pressed into service for the purpose of adjudication, a right of cross examination is in built. In order to establish that the cross examination is necessary; the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application in that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant opportunity to cross examine any official. It further held that applications for cross-examination are not to be filed in routine manner and equally also not to be disposed of by adjudicator in casual or routine manner and there has to be application of mind by him. Similarly, the consumer has to show as to why cross-examination is necessary.

Following the same, this writ petition is disposed of permitting the petitioner to make a fresh application showing as to why cross examination is necessary. If a fresh application is made, the authorities shall dispose of the same keeping in view the principles laid down in the above cited judgment.

The writ petition is accordingly disposed of. No costs.

28-2-2006

KMR